

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JUAN A. SANCHEZ-TORRES,
Petitioner,

v.

Case No. 09-C-0715

**JUDY P. SMITH, Warden, Oshkosh
Correctional Institution,**
Respondent.

ORDER

On July 22, 2009, Juan A. Sanchez-Torres filed this petition pursuant to 28 U.S.C. § 2254, asserting that his state court conviction and sentence were imposed in violation of the Constitution. Petitioner was convicted in Milwaukee County Circuit Court of sexual assault of a child and related offenses. He was sentenced to thirty years imprisonment and is currently incarcerated at Oshkosh Correctional Institution.

Pursuant to Rule 4 of the Rules Governing § 2254 Cases, I must give the case prompt initial consideration.

If it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Rule 4, Rules Governing § 2254 Cases.

Petitioner claims that his trial counsel committed a number of prejudicial errors and that therefore he received ineffective assistance of counsel. Ineffective assistance of counsel is clearly a constitutional ground for habeas relief under Strickland v. Washington,

466 U.S. 668 (1984), and its progeny. Thus, petitioner presents colorable constitutional issues and I will not dismiss his petition at this time.

Petitioner filed with his petition an application for leave to proceed in forma pauperis. He also, however, has submitted the \$5.00 filing fee for this habeas case. Because he has paid the filing fee, his request to proceed in forma pauperis will be denied as moot.

THEREFORE, IT IS ORDERED that within thirty (30) days of the date of this order respondent **ANSWER** the petition, complying with Rule 5 of the Rules Governing § 2254 Cases, and showing cause, if any, why the writ should not issue.

FURTHER, IT IS ORDERED that petitioner's request to proceed in forma pauperis is **DENIED** as **MOOT**.

FINALLY, IT IS ORDERED that unless respondent files a dispositive motion with its answer the parties shall abide by the following schedule regarding the filing of briefs on the merits of petitioner's claims: (1) petitioner shall have forty-five (45) days following the filing of respondent's answer within which to file his brief in support of his petition; (2) respondent shall have forty-five (45) days following the filing of petitioner's initial brief within which to file a brief in opposition; and (3) petitioner shall have thirty (30) days following the filing of respondent's opposition brief within which to file a reply brief, if any.

In the event that respondent files a dispositive motion and supporting brief with its answer, this briefing schedule will be suspended and the briefing schedule will be as follows: (1) petitioner shall have forty-five (45) days following the filing of respondent's dispositive motion and supporting initial brief within which to file a brief in opposition; and

(2) respondent shall have thirty (30) days following the filing of petitioner's opposition brief within which to file a reply brief, if any.

Pursuant to Civil L.R. 7.1(f), the following page limitations apply: briefs in support of or in opposition to the habeas petition or a dispositive motion filed by respondent must not exceed thirty pages and reply briefs must not exceed fifteen pages, not counting any statements of facts, exhibits, and affidavits.

Petitioner is advised that he must send copies of all future filings with the court to counsel for respondent, no matter whether in letter, brief, memorandum, or other form. Until respondent files his or her answer, these copies should be sent to Gregory Weber at the address below.

Pursuant to Rule 4 of the Rules Governing § 2254 Cases, copies of the petition and this order will be mailed to respondent Judy Smith and to the Attorney General for the State of Wisconsin, c/o Gregory Weber, Assistant Attorney General, P.O. Box 7857, Madison, WI 53707.

Dated at Milwaukee, Wisconsin, this 20 day of September, 2009.

/s_____
LYNN ADELMAN
District Judge